

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

V.

DUERST FARM LLC,  
KENT PAUL DUERST, and  
THE BANK OF NEW GLARUS,

**Defendants.**

Case Number 10-cv-00219-bbc

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above matter coming on to be heard before the above Court, Honorable Barbara B. Crabb, Chief United States District Judge for the Western District of Wisconsin, presiding without a jury, on the 11th day of August, 2010, the plaintiff, United States of America ("Plaintiff"), having appeared by its attorney, the Office of the United States Attorney for the Western District of Wisconsin, and no appearance having been made on behalf of any of the defendants herein except as may be noted on the record; and it appearing by the declaration of Megan McDermott, Assistant United States Attorney, Office of the United States Attorney, on file herein, that all of the defendants are in default, except as may be set forth in said declaration; and the Clerk having entered the default of Defendants Duerst Farm LLC and Kent Paul Duerst; and it further appearing that Plaintiff and Defendant The Bank of New Glarus have

entered a stipulation for judgment; and it further appearing that due notice of application for judgment has been made to each of the defendants, and that a certificate of service by mail was filed with the Clerk of the United States District Court for the Western District of Wisconsin; and the Court having heard the testimony and fully advised in the premises, therefore makes and files the following findings of fact and conclusions of law constituting its decision in this action.

### **Findings of Fact**

1. The allegations of the complaint are proven and true.

2. There is now due and unpaid on the notes, security agreement, financing statement, and statement of continuation as of the 11th day of August, 2010, the following sum:

SEE ATTACHMENT "A".

3. No proceedings have been had at law or otherwise for the recovery of the sums secured by said notes, security agreement, financing statement, and statement of continuation.

4. The items of security are described as follows:

SEE ATTACHMENT "B".

5. Plaintiff is entitled to immediate possession of the items of security on which Farm Service Agency has a security interest, set out in the complaint on file herein, as listed below:

SEE ATTACHMENT "B".

6. Defendant The Bank of New Glarus has a first priority lien in the following personal property and equipment of Defendant Kent Paul Duerst:

Gehl 4600 serial 2411 skidloader  
1972 Alice-Chalmers 220 factory cab 2743 tractor  
1972 Alice-Chalmers 220 2626 tractor  
1961 Alice-Chalmers D15 Series 1 2360 tractor  
Alice Chalmers 18 foot field cultivator

Pursuant to the stipulation between The Bank of New Glarus and the United States dated July 16, 2010, The Bank of New Glarus consents to judgment as prayed for in the complaint provided the proceeds of the sale of the items specified in this paragraph shall be paid first to Defendant Bank of New Glarus up to the amounts owing under the Bank's note dated April 30, 2009, then to Plaintiff.

#### **Conclusions of Law**

1. Plaintiff is entitled to judgment of foreclosure and sale in the usual form, as prayed for in Plaintiff's complaint, and in accordance with the above findings of fact.

2. The complaint in the above action was duly served on each of the defendants herein as set forth in the declaration of Megan McDermott, Assistant United States Attorney, Office of the United States Attorney, on file herein; the time for answering said complaint has expired; no answer or other response or appearance has been served on or received by Plaintiff's attorney from Defendants Kent Paul Duerst and Duerst Farm LLC; and Plaintiff and Defendant The Bank of New Glarus have entered a stipulation for judgment on terms set forth in paragraph 8 herein.

3. Plaintiff is entitled to recover from Defendants Kent Paul Duerst and Duerst Farm LLC the following sum:

SEE ATTACHMENT "A".

4. The items of security may be sold individually or as a whole at a public or private sale.

5. Deficiency judgment is not being sought in this action.

6. Sale of the items of security listed in Attachment B shall be conducted by or under the direction of the United States Marshal for the Western District of Wisconsin or Farm Service Agency.

7. Defendants and their heirs, respectively, and all persons claiming under them or any of them, be forever barred and foreclosed of all right, title, interest, and equity of redemption in said items of security so sold except as provided in Paragraph 8.

8. Defendant The Bank of New Glarus has a first priority lien in the following personal property and equipment of Defendant Kent Paul Duerst:

Gehl 4600 serial 2411 skidloader  
1972 Alice-Chalmers 220 factory cab 2743 tractor  
1972 Alice-Chalmers 220 2626 tractor  
1961 Alice-Chalmers D15 Series 1 2360 tractor  
Alice Chalmers 18 foot field cultivator

Pursuant to the stipulation between The Bank of New Glarus and the United States dated July 16, 2010, The Bank of New Glarus consents to judgment as prayed for in the complaint provided the proceeds of the sale of the items specified in this paragraph shall be paid first to Defendant The Bank of New Glarus up to the amounts owing under the Bank's note dated April 30, 2009, then to Plaintiff.

Now, on application of the Office of the United States Attorney for the Western District of Wisconsin, attorney for Plaintiff,

IT IS ORDERED, that judgment of foreclosure and sale of said items of security, in the usual form as provided by and in accordance with the above findings of fact and conclusions of law, be entered in this action.

Dated this 11<sup>th</sup> day of August, 2010.

BY THE COURT:

Barbara B. Crabb  
BARBARA B. CRABB  
~~Chief~~ United States District Judge  
Western District of Wisconsin

**ATTACHMENT A**

UNITED STATES OF AMERICA v. DUERST FARM LLC, et al.

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a. Principal as of August 11, 2010 \$158,994.64

b. Interest as of August 11, 2010 \$ 33,683.36

Subtotal \$192,678.00

c. Court Costs and Disbursements:

(1) Attorney's Fees \$ 200.00

(2) Marshal's Fees \$ 192.00

Subtotal: \$ 392.00

**TOTAL AS OF AUGUST 11, 2010**

**\$193,070.00**

**ATTACHMENT B**

**UNITED STATES OF AMERICA v. DUERST FARM LLC, et al.**

**Case Number 10-cv-00219-bbc**

**LIST OF ITEMS OF SECURITY**

A. All crops, annual and perennial, and other plant or farm products now planted, growing or grown, or harvested or which are planted after this instrument is signed or otherwise become growing or harvested crops or other plant products (a) within the one-year period or any longer period of years permissible under State law, or (b) at any time after this instrument is signed if no fixed maximum period is prescribed by State law, including the crops and plant products now planted, to be planted, growing or grown or harvested on the following described real estate:

<b>(1)</b> <b><i>Farm(s) or Other Real Estate</i></b> <b><i>*Owner</i></b>	<b>(2)</b> <b><i>Approximate Number of</i></b> <b><i>Acres</i></b>	<b>(3)</b> <b><i>County and</i></b> <b><i>State</i></b>	<b>(4)</b> <b><i>Approximate Distance and</i></b> <b><i>Direction from a Named</i></b> <b><i>Town or other Description</i></b>
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Including all entitlements, benefits, and payments from all state and federal farm programs; all crop indemnity payments; all payment intangibles arising from said crops and all general intangibles arising from said crops; and all peanut and tobacco poundage allotments and quotas existing on or leased and transferred or to be leased and transferred to the above described farms as well as any proceeds derived from the conveyance or lease and transfer by the Debtor to any subsequent party;

\*Owner shown in related Financing Statement, except if informed of ownership change show reputed new owner.

B. All farm and other equipment (except small tools and small equipment such as hand tools, power lawn mowers and other items of like type unless described below), and inventory, now owned or hereafter acquired by Debtor, together with all replacements, substitutions, additions, and accessions thereto, including but not limited to the following which are located in the State(s) of WISCONSIN :

(1) Line No.	(2) Quantity	(3) Kind	(4) Manufacturer	(5) Size and Type	(6) Condi- tion	(7) Year of manufac- ture	(8) Serial or Model No.
1	1	TRACTOR	AC	WD	GOOD	1950	55897
2	1	CHOPPER BOX	GEHL	910	GOOD		12868
3	1	CHOPPER BOX	GEHL	940	GOOD		26467
4	1	CORN PLANTER	AC	600 SERIES	FAIR		
5	1	GRADER BLADE	GRATZ	8'	GOOD		
6	1	TRACTOR	AC	D17	GOOD	1962	34453
7	1	TRACTOR	A/C	210D	GOOD	1973	2388
8	2	BALE RACKS	H&S	9' X 16'	GOOD		
9	1	OFFSET DISC	TAYLOR WAY	24" BLADE	GOOD		
10	1	SPREADER	NEW IDEA	3632	GOOD	1995	
11	1	TRACTOR	AC	170	GOOD		9345
12	1	COMBINE	AC GLEANER		GOOD		
13	1	TRACTOR	AC	7080	GOOD	1977	2200
14	1	TRACTOR	AC	190	GOOD	1971	2900057 SERIES 3
15	1	TRACTOR	AC	180D	GOOD	1968	3000027
16	1	TRACTOR	AC	180G	GOOD	1973	7781
17	1	TRACTOR	AC	180G	GOOD	1969	7404
18	1	TRACTOR	AC	D19	GOOD	1963	4431
19	1	TRACTOR	AC	D17	GOOD	1959	22692
20	1	TRACTOR	AC	D17	GOOD	1959	34453
21	1	TRACTOR	AC	WD45	GOOD	1955	190679
22	1	TRACTOR WIDE FRONT	AC	WD45	GOOD	1955	212708
23	1	TRACTOR NARROW FRONT	AC	WD45	GOOD	1953	148755
24	1	TRACTOR	AC	WC	GOOD	1937	34434
25	1	TRACTOR	AC	WC	GOOD	1943	120505
26	1	TRACTOR W/MOWER	AC	WD	GOOD	1950	96743
27	1	PLOW	AC	6/18	GOOD		
28	1	PLOW	AC	6/16	GOOD		
29	1	CHISEL PLOW	AC	10 POINT	GOOD		
30	2	WING DISC	AC	15' AND 13'	GOOD		
31	1	STEEL DRAG		24'	FAIR		
32	1	QUACK DIGGER		13'	FAIR		



(1) Line No.	(2) Quantity	(3) Kind	(4) Manufacturer	(5) Size and Type	(6) Condi- tion	(7) Year of manufac- ture	(8) Serial or Model No.
33	1	GRAIN DRILL	AC	12'	GOOD		
34	1	CORN PLANTER	AC	333	GOOD		
35	1	CULTIMULCHER	BRILLION	15'	GOOD		
36	1	CULTIVATOR	AC	4 ROW	GOOD		
37	1	HAYBINE	NEW HOLLAND	479	FAIR		
38	1	BALER	NEW HOLLAND	252	GOOD		
39	1	ROUND BALER	GEHL	1600	GOOD		
40	1	BLOWER	GEHL	99	GOOD		
41	1	TRACTOR	AC	7060	GOOD	1976	1239
42	2	CORN PICKERS	NI	PULL/MOUNT	GOOD		
43	1	SKID STEER	GEHL	360	GOOD		750 HRS/20 HORSE
44	1	TRACTOR	AC	D21	GOOD		
45	1	TRACTOR	AC	170	GOOD		8978
46	1	CHOPPER W/BOTH HEADS	GEHL	1200	GOOD		
47	2	RAKES	NEW IDEA	404	GOOD		
48	4	FLAT RACKS		8 X 16	GOOD		
49	1	ELEVATOR	OWATONNA	50'	GOOD		
50	1	ELEVATOR	LITTLE GIANT	36'	GOOD		
51	1	CHOPPER	AC	782, 2 ROW	GOOD		
52	1	FLAIL CHOPPER	GEHL		GOOD		
53	3	CHOPPER BOXES	GEHL	910	GOOD		
54	1	BLOWER	AC	60"	GOOD		
55	1	BLOWER	AC	60"	GOOD		
56	1	BLOWER	AC	48"	GOOD		
57	5	GRAVITY BOXES	J&M	200 BU.	GOOD		
58	1	MIXER MILL	GEHL	125	GOOD	1990	
59	1	GENERATOR	WINDPOWER		GOOD		
60	1	RECUTTER BLOWER	GEHL	800	GOOD		
61	1	MANURE SPREADER	NEW IDEA	375 BU	GOOD		
62	1	CHOPPER BOX	GEHL	810	GOOD		
63	1	TRACTOR (XT SERIES 3)	AC	190 XT	GOOD		27000007
64	1	COMBINE - 3 HEADS	AC (74L)	GLEANER	GOOD	1972	
65	4	BALE RACKS			GOOD		

(1) Line No.	(2) Quantity	(3) Kind	(4) Manufacturer	(5) Size and Type	(6) Condi- tion	(7) Year of manufac- ture	(8) Serial or Model No.
66	1	HAYBINE	NEW IDEA	5209 9 FT.	GOOD	1994	

(9) Including the following described fixtures which are affixed or are to be affixed to real estate; as-extracted collateral; or timber to be cut, all of which, together with the associated real estate, are more particularly described as follows (include legal description of the land):

**C. All livestock (except livestock and poultry kept primarily for subsistence purposes), fish, bees, birds, furbearing animals, other animals produced or used for commercial purposes, other farm products, and supplies, now owned or hereafter acquired by Debtor, together with all increases, replacements, substitutions, and additions thereto, including but not limited to the following located in the**

State(s) WISCONSIN :

[illegible]

**D. All accounts, deposit accounts, goods, supplies, inventory, supporting obligations, investment property, certificates of title, payment intangibles, and general intangibles, including, but not limited to the following:**

**Proceeds from Brian Duerst from the sale of milk**